

Before the
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

In the Matter of:

Expedited Consideration for Declaratory Rulings)	
On the transfer of traffic only under AT&T)	
Tariff Section 2.1.8., and Related Issues.)	
)	
Primary Jurisdiction Referral)	
from the NJ District Court)	
)	CCB/CPD 96-20
)	DA – 06-2360
)	WC Docket No. 06-210
800 Services, Inc.		
Public Comments)	
)	
and)	
AT&T Corp.)	
Respondent)	

REQUEST FOR EXTENSION OF TIME
TO FILE REPLY COMMENTS

To FCC:
Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary

Ms. Deena Shetler
Via ECFS and email:
Deena.Shetler@fcc.gov

Representing: 800 Services, Inc. is its' President Philip Okin

Dear Ms. Shetler

1) 800 Services, Inc., makes these comments with no expectation of financial gain from petitioners. I am sure the FCC would agree that it would be far fetched not to believe that any District Court would not want all Declaratory Rulings Requested resolved. I have reviewed the petitioners request to ask the FCC inform all parties

involved regarding whether it intends to address all Declaratory Ruling issues. If the FCC does not intend to address all Declaratory Rulings Requested lets cut to the chase and let the District Court know right now.

In reading over the FCC's Oct. 17th 2003 Declaratory Ruling the following excerpts are pertinent in that it stresses that Declaratory Relief is based upon **tariff language that is undisputed**.

Page 13 para 18

We disagree, however, with AT&T's contention that *all* of the issues upon which petitioners seek declaratory relief – or the court's primary jurisdiction referral (*See* Opposition at 9.)– involve disputed material issues of fact. (See Opposition at 14.) **The language of the tariff is undisputed**. It is undisputed that petitioners requested that A&T move end-user traffic from CCI to PSE and it is undisputed that AT&T did not effect that move. **These undisputed facts form the basis for our grants of declaratory relief**.

2) Ms. Shetler the tariffed facts involving the permissibility of shortfall are also undisputed. As exhibited by petitioner's direct quote of the tariff a CSTPII plan ends in 3 years. Petitioners must therefore be given grandfathering restructuring privileges (Discontinuance without Liability) through June 17th 1997; 3 years after the June 17th 1994 substantive tariff change. This would have provided a deferral to a maximum May 1998 fiscal year end date, to meet shortfall obligations. (June 1997–May 1998). There can be nothing clearer. 800 Services, Inc., agrees with the FCC's initial decision that it was disputed whether the shortfall could forever be deferred when restructuring, but there is no question 3 years of restructuring capability (through June 1997) was the minimum time period under the old rules, for the 3 year plans at issue. AT&T hit petitioners with shortfall and termination

charges in June of 1996 despite the non refuted fact that the plans were properly restructured. No parties disagree that these were the facts.

3) It is also undisputed that AT&T inflicted shortfall charges far in excess of the cap imposed by the tariff. Anyone can simply look at all the bills, which were made a part of the record, and see that the bills had shortfall charges that were far in excess of the clear tariff language, that AT&T could ONLY REDUCE THE DISCOUNT!!! It can be no clearer a tariffed statement. As the FCC stated “the language of the tariff is UNDISPUTED.” What is there to discover? Nothing! The facts are all there ready to rule--- Illegal Remedy.

4) Petitioners cited a quote that AT&T counsel made to the District Court in which AT&T counsel declared to the District Court that there were no disputed facts, and 800 Services, Inc., agrees there aren't any.

The FCC Declaratory Ruling Stated: Page 13 footnote 87

In accordance with the discretion allowed us in a declaratory proceeding, moreover, we see no need to attempt to resolve the disputed issues through a formal complaint proceeding before the Commission, as AT&T proposes. **Given our conclusion that AT&T violated section 203 of the Act, it is unclear what additional fact-finding on these issues is necessary.** Assuming that further inquiry is appropriate, efficiency favors their resolution in the district court where the evidentiary record already has been developed. That is consistent with petitioners' original choice of forum for this dispute, with petitioner's objective in this proceeding, *see* Reply at i (“Any factual issues which need to be addressed in order to apply the tariff, after the tariff is interpreted by the Commission, can be addressed by the District Court, which has already compiled an extensive factual record in this case”), 14, and with the court's primary jurisdiction referral. The district court proceeding is still pending and the parties have presented evidence in that forum, *inter alia*, in the course of a two-day hearing.

5) There is no additional fact finding necessary with the issues of permissibility of shortfall and the illegal manner in which the shortfall was purposely inflicted to destroy the aggregator. The tariff and AT&T's actions are abundantly clear that AT&T placed shortfall charges on the end-users bills in excess of the tariffed cap which only allows reducing the discount. This wasn't a mistake. AT&T did it to all aggregators. It was calculated by AT&T to destroy the aggregators. Even if it was a mistake, AT&T is accountable for its illegal remedy actions.

6) Does the FCC really believe that if petitioners asked the District Court if it wants the FCC to resolve all Declaratory Ruling Requests that the District Court is going to say--- FCC don't do it! Or is AT&T going to go back to the District Court and change its position again and tell the District Court that these are all interpretive issues that the FCC has to decide.

7) The record clearly shows that when AT&T was before the Courts its' position was ----these are all interpretive issues that the FCC must decide. When AT&T was before the FCC it claimed ----these are all disputed facts that the Court must decide. Fool me once shame on you, fool me twice shame on me. The FCC should know AT&T's con game better this time around!

8) The tariff facts and AT&T's actions are very clear. The FCC doesn't need the District Court at this point. 800 Services, Inc seriously believes that the FCC and the DC Court will find everything clear as can be at this point and therefore the FCC needs to rule on all Declaratory Ruling Requests. AT&T conned its way into 12 years of delay; 800 Services Inc., respectfully requests that the FCC address all of petitioners declaratory Ruling Requests.

9) Petitioners on the money--in depth--tariff analysis; along with zero AT&T evidence to support its position despite claiming it has done tens of thousands of traffic only transfers, makes the traffic transfer issue the easy part of the case for petitioners. It is now getting the FCC to address the shortfall infliction Declaratory Ruling Requests which is 800 Services, Inc.'s focus **because that is where 800 Services, Inc.'s has its own damages to pursue.**

10) In the FCC's 2003 Declaratory Ruling the FCC stated that it was not asked to answer issues regarding the infliction of shortfall and termination charges.

Obviously now we are all asking.

Respectfully submitted,

Phillip Okin Pres.

800 Services, Inc.